78-16

In The
Supreme Court Of The United States

OCTOBER TERM, 1978

NO. [redacted]

JAMES E. RUNKLES, JR., PETITIONER

vs.

STATE OF CONNECTICUT, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF CONNECTICUT

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VS.	)	TO THE SUPREME COURT
	)	OF THE STATE OF CONNECTICUT
STATE OF CONNECTICUT, Respondent	)	JUNE 5 , 1978

TO THE HONORABLE WARREN E. BURGER, CHIEF JUSTICE OF THE UNITED STATES, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

NOW COMES JAMES E. RUNKLES, JR., by his Attorneys John P. Febbroriello, Esq., and Joseph F. Keefe, Esq., the latter being a member of the Bar of the United States Supreme Court, and petitions this Honorable Court for a Writ of Certiorari directed to the Supreme Court of the State of Connecticut, to review that certain published decision, State v. Runkles, 39 Conn. L. J. No. 37, March 14, 1978, denying an appeal from the judgment of the trial court and from the decision of the trial court denying a motion to suppress evidence. Petitioner, James E. Runkles, Jr., prays that a Writ of Certiorari issue to review the judgment of the Connecticut Supreme Court entered on March 14, 1978, rehearing denied on April 18, 1978.

Pursuant to Rule 23, Rules of the Supreme Court of the United States, Petitioner submits the following:

OPINION BELOW

The official and unofficial report and citation of the judgment herein sought review is State v. Runkles, 39 Conn. L. J. No. 37, page 1 (March 14, 1978), ____A.2d ____ (unpublished). A petition for rehearing was filed on April 7, 1978 and the rehearing was denied April 18, 1978.

This opinion was rendered by the Supreme Court of the State of Connecticut. A copy of this opinion is appended as APPENDIX "A".

This opinion was preceded by a decision of a judge of the Connecticut Superior Court, who, after trial, found the defendant guilty of the crimes of possession of marijuana with intent to sell and of having a weapon in a motor vehicle, which opinion is unreported, in either the official or unofficial reports, and which opinion was not a written memorandum of decision.

JURISDICTION

The grounds upon which the jurisdiction of this Honorable Court is invoked are:

(i) the date that the judgment which is sought to be reviewed was entered on March 14, 1978;

(ii) the petition for rehearing was made on April 7, 1978 and denied on April 18, 1978 by the Connecticut Supreme Court

(Appendix "B"), and all state remedies have been exhausted;

(iii) the statutory provision conferring jurisdiction on this Honorable Court is 28 U.S.C. §1257(3) which provides:

> Final judgment or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: . . . By a writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

Jurisdiction of this Honorable Court is further invoked because the Connecticut Supreme Court has decided several federal questions in a way not in accordance with applicable decisions of this Honorable Court in the areas of search and seizure, United States v. Chadwick, - U.S.-, 53 L.Ed. 2d 538; Coolidge v. New Hampshire, 403 U.S. 443, and the Harmless Error Doctrine, Chapman v. State of California, 386 U.S. 18.

QUESTIONS PRESENTED FOR REVIEW

Is a warrantless search of the contents of personal luggage constitutionally permissible when the search is conducted without consent and is not pursuant

to any recognized exception to the warrant requirement?

Is a warrantless search of the contents of a fully-enclosed, windowless and locked constitutionally permissible when police had ample opportunity to obtain a warrant prior to the time of the seizure and search?

Is error "harmless" within the meaning of Chapman v. State of California and Fahy v. State of Connecticut when it results in the admission of the physical evidence used as the basis for a defendant's conviction?

UNITED STATES CONSTITUTIONAL AMENDMENTS AND CONNECTICUT STATUTES INVOLVED

FOURTH AMENDMENT

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

FOURTEENTH AMENDMENT

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law

> which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF FACTS

In February and March of 1974, Joseph Mancini, a Sergeant in the Waterbury, Connecticut, Police Department and the Director of the Naugatuck Valley Regional Crime Squad, personally met with an informer known to him to be reliable (Finding 9). The informer gave Sergeant Mancini the following information:

1. That a shipment of 1,000 to 1,500 pounds of marijuana was going to be transported into Connecticut on April 22, 1974;

2. That the shipment would originate in El Paso, Texas and would enter Connecticut via Massachusetts, down U.S. Route 7;

3. That the marijuana would be transported in a U-Haul trailer;

4. That one Robert Piccolo of Waterbury, Connecticut, known to Sergeant Mancini, would be involved in the shipment. (Findings 7, 8, 9, 10, 11, 12).

On April 22, 1974 between 12:00 noon and 1:00 p.m. the informer called Sergeant Mancini and reiterated the information that had been previously conveyed, with

the additional information that Robert Piccolo's involvement would be either leading or driving the U-Haul trailer or a Mercury. The information was once again confirmed in a telephone call by the informant to Sergeant Mancini between 5:00 p.m. and 6:00 p.m. the same day. (Findings 14, 15, 16, 17).

Based on the information obtained from the informer, and a conversation between Sergeant Mancini and one Thomas Carney, a Sergeant in the Connecticut State Police and a field supervisor for the State Police Narcotics Squad, Western Division, Sergeant Carney sent out a teletype message to Connecticut Police Barracks. (Findings 18, 19, 21, 27, 28). The conversation between Sergeant Mancini and Sergeant Carney took place between 4:00 p.m. and 4:30 p.m. on April 22, 1974. The teletype contained the informant's information, including a physical description of Robert Piccolo. (Findings 22, 18).

Between 7:30 p.m. and 8:00 p.m. on April 22, 1974, one James M. McGarry, the Chief of Police of the Town of Sheffield, Massachusetts, who had previously received a copy of the teletype message, began following a Mercury Marquis which was hauling a U-Haul Trailer, with Texas registration, and which was proceeding south on U.S. Route 7. (Findings 30, 33, 34, 36). Chief McGarry immediately contacted the Connecticut State Police by radio via the Great Barrington Police, and maintained this contact, continually relaying his location. (Findings 37, 39). This resulted in the appearance of two Connecticut Police cars, containing a Connecticut State Police Sergeant Janco and two

troopers, which also followed the vehicles. (Findings 41, 48, 61).

The Mercury and a black foreign car subsequently pulled into a gas station at the intersection of Routes 7 and 63 (Finding 42). It was observed that the driver of the foreign car matched the description of Robert Piccolo. (Finding 45). The foreign car left the gas station and was followed by one of the Connecticut Police cars containing one trooper. (Finding 61).

A trooper approached the occupant of the Mercury, who was the defendant, James E. Runkles, Jr. (Findings 60, 62). The defendant was detained at the scene as a result of the teletype message. A briefcase was observed on the floor of the back seat. The defendant was subsequently asked to get out of the car, and did so. (Finding 65). An officer remained with him, while one trooper examined the locked, fully-enclosed and windowless trailer, whose doors fitted somewhat loosely; through a crack he observed bags of plant material and detected an herbal odor. (Findings 67, 69, 70, 71). The lock was subsequently broken by the trooper, under orders from Sergeant Janco. Twenty three bags of plant material were seen. (Finding 72). The defendant was then arrested and placed in custody. (Finding 73).

Approximately 15 to 20 minutes after the arrest of the defendant, the Connecticut Police personnel on the scene turned their attention to the interior of the Mercury. It was observed that the briefcase was on the front seat. (Finding 75). Sergeant Janco removed the briefcase from

the vehicle, placed it on the ground and opened it. A small NVR.22 caliber revolver was found in the briefcase and both were seized. (Findings 87, 88).

On a trial to the court in the Superior Court of Connecticut, the defendant was found guilty of possession of marijuana with intent to sell (Conn. Gen. Stat. §19-480) and of having a weapon in a motor vehicle (Conn. Gen. Stat. §29-38).

The defendant made timely objection to the submission into evidence of the fruits of the search of the trailer and the briefcase, both in a separate hearing on a motion to suppress, entered prior to the trial and on renewed motions to suppress at the trial. All of the motions were denied and proper exception taken. The defendant further attempted to question State's witnesses regarding the informant, and specifically whether the informant was a police officer or in the employ of a police unit. The State objected, and the objection was sustained over argument by the defendant as to the relevancy of the information sought. Proper exception was taken. All of these questions were raised by the defendant in his appeal to the Connecticut Supreme Court.

REASONS FOR GRANTING WRIT OF CERTIORARI

The constitutional issues herein asserted were presented to the Connecticut Superior Court and the Connecticut Supreme Court. They involve the defendant's rights guaranteed him under the Due Process Clause of the Fourteenth Amendment, his right to the suppression of evidence under the Fourth Amendment, and the application of the Harmless Error Rule to the

testimony sought by the defendant and bearing upon the illegally seized evidence that was introduced at his trial, which resulted in the defendant's conviction.

The defendant has exhausted his state remedies, and his only opportunity to have these matters reviewed is by this Court on direct appeal.

It is of special importance that this Honorable Court agree to review the issues raised by the defendant. Not only does it appear that the Connecticut Superior Court and the Connecticut Supreme Court have seriously deprived the defendant of his right under the Constitution as set forth in the decisions of this Court regarding the Harmless Error Doctrine and the warrantless search of luggage in which the defendant retained an expectation of privacy; it also appears that both the Connecticut Superior Court and the Connecticut Supreme Court have interpreted the so-called "automobile exception" to the warrant requirement much more broadly than is either warranted under the decisions of this Honorable Court or advisable in a democratic society.

ARGUMENT

I.

IS A WARRANTLESS SEARCH OF THE CONTENTS OF PERSONAL LUGGAGE CONSTITUTIONALLY PERMISSIBLE WHEN THE SEARCH IS CONDUCTED WITHOUT CONSENT AND IS NOT PURSUANT TO ANY RECOGNIZED EXCEPTION TO THE WARRANT REQUIREMENT?

The defendant was found guilty of the crime of having a weapon in a motor vehicle in violation of Conn. Gen. Stat. §29-38. The entire basis of the defendant's conviction was clearly a result of the gun obtained from the search of the briefcase which had been seized from the Mercury. The defendant contends that this search was illegal and that the fruits of this search should have been suppressed.

It is clear that to some extent, due to the inherent mobility of an automobile and the diminished expectation of privacy which surrounds it, the standard of reasonableness has been somewhat relaxed with respect to searches of automobiles:

> "But this Court has recognized significant differences between Motor vehicles and other property which permit warrantless searches of automobiles in circumstances in which warrantless searches would not be reasonable in other contexts." United States v. Chadwick, -U.S.-, 53 L.Ed. 2d 538, at 549, 97 S.Ct__ (1977).

On the other hand, "(t)he word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears."

Coolidge v. New Hampshire, 403 U.S. 443, 29 L.Ed 2d 564, 915 S. Ct. 2022 (1971). Mere contact with an automobile does not remove from certain items the legitimate expectations of privacy an individual may have in those items. The mere placing of a closed piece of luggage or a closed briefcase within an automobile does not automatically make the contents of the luggage or briefcase subject to search, even if a search of the rest of the automobile may be considered reasonable under the circumstances:

> Luggage contents are not open to public view, except as a condition to a border entry or common carrier travel; nor is luggage subject to regular inspections and official scrutiny on a continuing basis. Unlike an automobile, whose primary function is transportation, luggage is intended as a repository of personal effects. In sum, a person's expectations of privacy in personal luggage are substantially greater than in an automobile. United States v. Chadwick, supra, at 549.

Thus, in order to overcome the "substantially greater" expectations of privacy in personal luggage and justify a warrantless search of such luggage, more than the minimum standards of reasonableness for a warrantless search of an automobile must be met. Such a standard was clearly not met in the instant case. The warrantless search of the briefcase in question cannot be justified under the plain view exception, under "exigent circumstances", nor as a search incident to arrest.

The "plain view" exception would not allow the search of the contents of the closed briefcase, although it might allow a seizure of the briefcase.

> "Respondents' principal privacy interest in the footlocker was of course not in the container itself, which was exposed to public view, but in its contents. A search of the interior was therefore a far greater intrusion into Fourth Amendment values than the impoundment of the footlocker." United States v. Chadwick, supra, at 550 footnote 8.

There were no "exigent circumstances" sufficient to justify a warrantless search of the contents of the briefcase. The location of the briefcase in the car might have been sufficient exigency to allow a seizure of the briefcase to preserve it from vandalism if the Connecticut State Police were not going to tow the car and trailer, but this alone could not justify the "far greater intrusion into Fourth Amendment values" involved in a search of the contents. Clearly there was no suspicion on the part of Sergeant Janco, who searched the briefcase, that there were explosives in the briefcase, else he would not have opened the briefcase as he did.

Finally, a warrantless search incident to arrest is limited to a "search of the arrestee's person and the area 'within his immediate control' - construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." Chimel v. California, 395 U.S., 752 at 763, 23 L.ed. 2d 685,

89 S. Ct. 2034 (1969). The defendant in the instant case was in custody, having been arrested at least 15 to 20 minutes previously. He was outside the car, some distance from the vehicle, under the close supervision of at least one officer at all times. The briefcase in question was located inside the Mercury, and all of the doors of the Mercury were closed. Thus the interior of the vehicle was not in any sense an area 'within his immediate control'. In addition, had the Connecticut State Police officers on the scene needed to search the briefcase for weapons in order to protect themselves, or had they been in any way concerned about the contents of the briefcase, the officers would obviously not have waited 15 to 20 minutes to turn their attention to the briefcase.

In sum, the warrantless search of the closed briefcase was not a "reasonable search" within the meaning of the Fourth Amendment, and the fruits of this search - namely, the gun which was the basis of the defendant's conviction for possession of a weapon in violation of Conn. Gen. Stat. §29-38, should have been suppressed.

II.

IS A WARRANTLESS SEARCH OF THE CONTENTS OF A FULLY ENCLOSED, WINDOWLESS AND LOCKED TRAILER CONSTITUTIONALLY PERMISSIBLE WHEN POLICE HAD AMPLE OPPORTUNITY TO OBTAIN A WARRANT PRIOR TO THE TIME OF THE SEIZURE AND SEARCH?

The defendant was convicted of possession of marijuana with intent to sell (Conn. Gen. Stat. 19-480). The basis for his conviction was the marijuana discovered in the search of the U-Haul trailer. The defendant contends that this search was illegal, in that it was conducted without a warrant despite the fact that there was ample opportunity to obtain a warrant; the defendant therefore contends that the fruit of the search should have been suppressed.

It is well established that warrantless searches are "per se unreasonable under the Fourth Amendment - subject only to a few specifically established and well delineated exceptions." Katz v. United States, 389 U.S. 347, at 357, 19 L.Ed. 2d 576, 88 S. Ct. 507 (1967).

Warrantless searches of automobiles have been upheld in a variety of circumstances, and both the Connecticut Superior Court and the Connecticut Supreme Court relied on these automobile search cases in making their decisions. This reliance is misplaced.

The instant case does not involve the search of an automobile, but the search of a locked, fully-enclosed windowless trailer. Thus one of the primary bases for greater latitude in automobile searches, namely

the greatly diminished expectations of privacy in a vehicle whose interior is open to public view, does not apply in this case. On the contrary, sheer logic of circumstances would indicate a very substantial expectation of privacy in the contents of a trailer which are hidden from public view and placed behind securely locked doors. This substantial expectation of privacy raises a correspondingly substantial burden on the state to justify the reasonableness of a warrantless search.

In addition, the various decisions of this Honorable Court in the area of automobile searches have focused on specific factual circumstances, none of which are applicable in the instant case. Clearly this was not a custodial search under South Dakota v. Opperman, 428 U.S. 364, 49 L.Ed. 2d 1000, 96 S. Ct. 3092 (1977). The search in this case was not for a "community caretaking function" but a pretext search for a criminal investigation. Therefore the Connecticut Supreme Court's reliance on South Dakota v. Opperman, supra, is misplaced. This was not a limited search of the exterior such as scraping paint and taking tire casts, Cardwell v. Lewis, 417 U.S. 583, 41 L.Ed. 2d 325, 94 S. Ct. 2464 (1974), but a full search of the interior contents of a locked trailer. Finally this was not a situation in which the basis of the search arose with an immediacy that did not allow the opportunity to obtain a warrant. Carroll v. United States, 267 U.S. 132, 69 L.Ed. 543, 45 S. Ct. 280. Mobility alone has been rejected as allowing a warrantless search. United States v. Chadwick, -U.S.-, 53 L.Ed.2d 538, 97 S. Ct. - (1977). The discovery of marijuana was clearly

anticipated in the instant case, and the relevant details were known far in advance of the seizure and search.

> Where the discovery is anticipated, where the police know in advance the location of the evidence and intent to seize it, the situation is altogether different. The requirement of a warrant to seize imposes no inconvenience whatever, or at least none which is constitutionally cognizable in a legal system that regards warrantless searches as 'per se unreasonable' in the absence of 'exigent circumstances'. Coolidge v. New Hampshire, 403 U.S. 443, at 469.

At least as early as March, 1974, the police had in their possession sufficient information to obtain a warrant. They knew the route, the date, the type of vehicle to be used (a U-Haul trailer), the type of contraband, the amount of contraband, and at least one party who would be involved in the shipment. They had a reliable informant. A reliable informant, combined with the specificity of the information conveyed, is clearly sufficient to obtain a warrant under Draper v. United States, 358 U.S. 307, 3 L.Ed.2d 327, 79 S.Ct. 329 (1959) and Spinelli v. United States, 394 U.S. 410, 21 L.Ed. 2d 637, 89 S. Ct. 584 (1969).

It may be argued that this information would have been "stale" by April 22, 1974. However, the police had a further opportunity to obtain a warrant on "fresh" information in the middle of the day of April 22, 1974. The informant spoke to Sergeant Mancini between 12:00 noon and

1:00 p.m. on April 22, 1974, and confirmed all the previous information. In addition, the informant communicated the added specific information that a Mercury motor vehicle would be used. Once again, the police had ample opportunity to obtain a warrant but failed to do so.

The burden is on the State to sustain a warrantless search. Vale v. Louisiana, 399 U.S. 30 (1970). The State's burden in the instant case should be greater than that required for an automobile search because there was a greater expectation of privacy in the contents of a trailer. Since it is clear that the police had ample opportunity to obtain a warrant well in advance of the search of the trailer, the State has failed to meet its burden of proof that the warrantless search of the trailer was necessitated by "exigent circumstances."

III.

IS ERROR "HARMLESS" WITHIN THE MEANING OF CHAPMAN V. STATE OF CALIFORNIA AND FAHY V. STATE OF CONNECTICUT WHEN IT RESULTS IN THE ADMISSION OF THE PHYSICAL EVIDENCE USED AS THE BASIS FOR A DEFENDANT'S CONVICTION?

In connection with the defendant's motions to suppress the evidence obtained in the search of the U-Haul trailer, the attorney for the defendant attempted to question Sergeant Mancini with respect to the informant used. The defendant did not seek the identity of the informant, but merely sought to discover whether the informant was a police officer or in the employ of a police department. The State's Attorney objected, and the objection was sustained over defendant's argument regarding the relevancy of the information as it related to the legality of the search. The Connecticut Supreme Court held that this was error, but that the error was harmless since the question went to the reliability of the informant and not to the guilt of the defendant (Appendix A).

The significance of the information sought by the defendant goes well beyond the reliability of the informant. In effect, the defendant contends that the question, if answered in the affirmative, would have provided a further basis for holding the search of the trailer unreasonable and requiring the fruits of the search to be suppressed.

Information from an informant who was a police officer or in the employ of the police department would have satisfied

the test of Aguilar v. Texas, 378 U.S. 108, 12 L.Ed. 2d 723, 84 S. Ct. 1509 (1964). Such a factual situation would have made more apparent than ever the ample opportunity available to the police to obtain a warrant, and the resulting unreasonableness of the subsequent warrantless search of the trailer. Such a factual situation could well have resulted in the suppression of the primary evidence admitted in the defendant's trial - namely, the marijuana discovered in the trailer.

This Honorable Court has held that ". . . before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt." Chapman v. State of California, 386 U.S. 18, 17 L.Ed. 2d 705, 87 S. Ct. 824, at 828 (1967). An error which potentially resulted in the admission of evidence which is clearly the basis of the conviction could not logically be declared harmless beyond a reasonable doubt.

A similar holding was reached in Fahy v. State of Connecticut, 375 U.S. 85, 84 S. Ct. 229 (1963): "We find that the erroneous admission of this unconstitutionally obtained evidence at this petitioner's trial was prejudicial; therefore, the error was not harmless . . ." The evidence of the search was prejudicial, and the defendant was seeking to suppress that evidence through the questions directed to Sergeant Mancini about the informer.

One additional point is worthy of consideration. The burden of sustaining the reasonableness of a warrantless search is on the State. Vale v. Louisiana, supra.

By refusing to allow the defendant's questions with respect to the status of the informant, the trial court shifted the burden of proof onto the defendant. By refusing to hear evidence which would potentially support the availability of a warrant well in advance of the search of the trailer, the trial court greatly reduced the burden of the State to show the reasonableness of the warrantless search.

CONCLUSION

Based upon the facts hereinabove set forth and the issues raised in this Petition, the Appellant-Petitioner, James E. Runkles, Jr., prays for the issuance of a writ of certiorari to issue from this Court to the Supreme Court of the State of Connecticut.

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APPENDIX A

Excerpt from Connecticut Law Journal, Vol. XXXIX, No. 37, March 14, 1978:

CONNECTICUT REPORTS

SUPREME COURT

November Term, 1977

STATE OF CONNECTICUT *v.* JAMES E. RUNKLES, JR.

HOUSE, C. J., COTTER, LOISELLE, BOGDANSKI and LONGO, Js.

Argued November 10, 1977—decision released March 14, 1978

Information charging the defendant with the crimes of possession of marihuana with intent to sell and having a weapon in a motor vehicle, brought to the Superior Court in Litchfield County and tried to the court, *Speziale, J.*; judgment of guilty and appeal by the defendant. *No error.*

***John P. Febbroriello,* with whom, on the brief, was *Peter C. Herbst,* for the appellant (defendant).**

***Robert E. Beach, Jr.,* assistant state's attorney, for the appellee (state).**

HOUSE, C. J. On a trial to the Superior Court in Litchfield County, the defendant was found guilty of the crimes of possession of marihuana with intent to sell (1973 Public Acts, No. 73-681, § 26 [a]) and of having a weapon in a motor vehicle in violation of § 29-38 of the General Statutes. He appealed to this court from the judgment and from the decision of the trial court denying his motion to suppress evidence.

As the defendant notes in his brief, "[t]he appeal of the appellant is based upon two basic positions: one is that there was no probable cause to stop and search the vehicle of the appellant; and the second is that if there was probable cause to do so a warrant was necessary." While he has attacked each conclusion of the court and several rulings on evidence, and also assigns error to the refusal of the court to add certain facts to its finding, the defendant has not attacked the court's affirmative findings of fact.

Because of the nature of the case, it is necessary to summarize the court's finding in greater detail than usual. In 1974, Joseph Mancini was a sergeant in the Waterbury police department and in charge of the Naugatuck Valley regional crime squad. During the months of February and March, he received information that large shipments of marihuana were being sent into Connecticut from Texas by way of Massachusetts. Sometime before 1 p.m. and again between 5 and 6 p.m. on April 22, he received word from a reliable informant, whom he knew well, that a shipment of 1000 to 1500 pounds of marihuana coming from El Paso, Texas, would be transported by U-Haul trailers down U.S. route 7 from Massachusetts into Connecticut. He was also told that Robert Piccolo of Waterbury was involved in the shipment and was either leading or driving a U-Haul trailer or a Mercury. Mancini knew Piccolo and knew that he was involved with narcotics. Mancini reported the information to two sergeants in the Connecticut state police, Frederick H. Bird and Thomas F. Carney, and gave them a detailed description of Piccolo. A teletype message concerning the information was sent out by the state police to other state police barracks and Sergeant Carney, a field supervisor with the state police narcotics squad, western division, discussed the message with Sergeant Joseph Janco of troop B in Canaan. The teletype message contained a description of Piccolo.

James M. McGarry, the police chief in Sheffield, Massachusetts, which town abuts the town of Canaan, visited troop B at 6:30 p.m., read the teletype message and took a copy with him. He returned to Sheffield and stationed himself on the east side of U.S. route 7 and observed traffic. About 7:30 p.m., McGarry observed a Mercury Marquis pulling a U-Haul trailer with Texas license plates proceeding southerly on route 7 and followed it. He radioed the Great Barrington police and asked them to notify troop B in Canaan that he was following the Mercury Marquis pulling the U-Haul trailer south on route 7. Following the U-Haul trailer at a distance quite far behind, he crossed into Connecticut, keeping the Connecticut state police advised of his location through the Great Barrington radio. At one time, the Mercury was traveling slowly and McGarry observed a small, black, foreign car in front of it. Both the Mercury, pulling the U-Haul trailer, and the foreign car pulled off the highway and into a gas station at the intersection of U.S. route 7 and route 63. McGarry continued south on route 63, passing the gas station on his right. The foreign car had stopped at the station, facing into route 63 at almost a 90 degree angle to route 63, and as McGarry passed the station his headlights shone on the occupant of that car whom McGarry observed was an individual fitting the description of Robert Piccolo as given in the teletype. McGarry continued a short distance beyond the station, turned around and went back to the gas station. By the time he arrived, the foreign car had left but the Mercury and U-Haul trailer were still at the station and Sergeant Janco and Trooper Dante Notte were there. McGarry, as soon as he arrived, told the officers that the occupant of the foreign car met the teletyped description of Piccolo. The defendant, Runkles, was the driver of the Mercury and McGarry identified him in the courtroom at the trial.

Trooper Notte had been on patrol duty and had been alerted by Sergeant Janco to be or the lookout for the U-Haul trailer on U.S. 7 and had received by police radio information that Chief McGarry was following it and that it was probably accompanied by an Audi automobile, a small foreign-type car. When the Audi and U-Haul trailer turned into the gas station, Notte followed them and went alongside the Mercury with his lights flashing on the operator's door. The Audi was at the station less than a minute before it left the scene and Notte shouted to another trooper to pursue it. The only person in the Mercury was the defendant, Runkles, who was sitting in the driver's seat. Notte asked the defendant for his license and registration and the defendant produced his license and said that the registration was in his briefcase which Notte noticed was on the floor in the back seat immediately behind Runkles.

At this point, Sergeant Janco arrived and Notte told him what had happened. At Janco's request, Runkles got out of the car. When asked what was in the U-Haul trailer, Runkles said, "antiques."

In response to a request that he unlock the trailer, the defendant stated that he did not have the key because it had been mailed to a forwarding address. When asked if he minded whether the officers opened the trailer, he stated that they had no reason to do so. Although the doors to the trailer were locked, they were loosely fitted. Trooper Notte examined the lock and the doors and, as they were loose, he knelt down and flashed his light into the opening underneath the door near the bottom of the trailer and observed plant material in burlap bags covered with plastic. He also noticed a definite strong herb-type scent which, from his experience, he identified as marihuana. Sergeant Janco similarly inspected the trailer and confirmed Trooper Notte's findings whereupon the lock was snapped and they found in the trailer 999 pounds of marihuana contained in

twenty-three bags. It had a value of about $320,000. Tests later conducted by the state toxicology laboratory confirmed that it was marihuana.

After discovering the marihuana, Trooper Notte read the "Miranda" warning to the defendant and placed him under arrest. Sergeant Janco then opened the front door of the Mercury and saw that the briefcase was now on the front seat of the car. Upon opening the briefcase, Janco found it contained a small loaded NVR .22-caliber revolver. Runkles had no permit to carry the gun. The black Audi automobile registered in the name of Robert Piccolo was later found in Torrington where it had been abandoned.

The defendant briefed five claims of error in the refusal of the trial court to make corrections in the finding, but it does not appear that the claims have merit. Only admitted or undisputed facts will be added to a finding; Practice Book § 628 (a); *Sachem's Head Assn.* v. *Lufkin,* 168 Conn. 365, 368, 362 A.2d 519; and a finding will not be corrected merely to insert therein in one place a fact already found in another. *Cleveland* v. *Cleveland,* 165 Conn. 95, 96, 328 A.2d 691.

The defendant's claim that the evidence seized at the time of the arrest was improperly admitted in evidence is predicated on his assertion that the court erred in concluding that the police had probable cause to search the U-Haul trailer, automobile and briefcase without a warrant. The defendant's reliance upon the holding of the United States Supreme Court in *Whiteley* v. *Warden,* 401 U.S. 560, 91 S. Ct. 1031, 28 L. Ed. 2d 306, is misplaced. In that case the court (p. 567) reaffirmed its decision in *Draper* v. *United States,* 358 U.S. 307, 79 S. Ct. 329, 3 L. Ed. 2d 327, that although an informer's tip by itself may not support a finding of probable cause for an arrest and search, nevertheless, additional information gathered by the arresting officers

in an investigation undertaken as a result of the tip, which information is corroborative of that tip that the arrestee has committed or was in the process of committing a felony, may supply sufficient probable cause for an arrest and search. That was clearly the circumstance in the present case. The information given to the police by the informer was detailed, Piccolo was identified by name and description, the route to be taken by Piccolo and the U-Haul trailer with Texas registration was foretold, and the officers detected the odor of marihuana from the trailer. All of these served amply to corroborate the informer's tip. "Police action may be justified by the collective knowledge of the law enforcement organization. *State* v. *Romano*, 165 Conn. 239, 246, 332 A.2d 64; *State* v. *Cobuzzi* [161 Conn. 371, 377, 288 A.2d 439, cert. denied, 404 U.S. 1017, 92 S. Ct. 677, 30 L. Ed. 2d 664]; see *United States ex rel. LaBelle* v. *LaVallee*, 517 F.2d 750, 753 (2d Cir.)." *State* v. *Acklin*, 171 Conn. 105, 111–112, 368 A.2d 212. We conclude that the officers had ample grounds for a reasonable belief that the defendant was committing a felony and that they had sufficient probable cause to justify the immediate search and his arrest under the holdings of the United States Supreme Court and of this court. See *South Dakota* v. *Opperman*, 428 U.S. 364, 96 S. Ct. 3092, 49 L. Ed. 2d 1000; *Adams* v. *Williams*, 407 U.S. 143, 92 S. Ct. 1921, 32 L. Ed. 2d 612; *Draper* v. *United States*, 358 U.S. 307, 79 S. Ct. 329, 3 L. Ed. 2d 327; *State* v. *Schoenbneelt*, 171 Conn. 119, 368 A.2d 117; *State* v. *Acklin*, supra; *State* v. *Love*, 169 Conn. 596, 600, 363 A.2d 1035.

Nor do we find any error in the admission into evidence of the loaded gun which the police found in the defendant's briefcase which they searched after they had arrested the defendant. The search and seizure took place at the site of and immediately after the arrest of the defendant and after the officers had observed that the briefcase which had been on the floor of the car behind the defendant had

been moved to the passenger side of the front seat. "[T]he situation unquestionably provided the exigent circumstances and probable cause to justify the search. *Chambers* v. *Maroney*, 399 U.S. 42, 90 S. Ct. 1975, 26 L. Ed. 2d 419, rehearing denied, 400 U.S. 856, 91 S. Ct. 23, 27 L. Ed. 2d 94." *State* v. *Watson*, 165 Conn. 577, 588, 345 A.2d 532; see *Texas* v. *White*, 423 U.S. 67, 96 S. Ct. 304, 46 L. Ed. 2d 209; *State* v. *Acklin*, supra, 113; *State* v. *Cari*, 163 Conn. 174, 187, 303 A.2d 7.

The defendant's remaining claim is that the court erred in sustaining the state's objection to a question asked during the cross-examination of Sergeant Mancini. The sergeant had testified concerning the information he had received from an informant which information led to the apprehension of the defendant. On cross-examining the officer, the defendant asked: "For the information that you gained from this particular informer, did you compensate him in any way, shape or form?" The state objected that the information sought was irrelevant and immaterial. The defendant claimed that the question was a proper one because he wished to find out if the informer was, in fact, "an agent under the control of the witness," if he were an employee, and "perhaps, the reason why he stepped forward as an informant, whether it's for compensation, some type of personal gain or whatever." He also stated: "I think it goes to the reliability of the informant. It would also go to the question of the search in this matter, Your Honor. I feel, as I expressed during the motion to suppress, that if this particular informant were an active employee or otherwise associated with the narcotics squad, then the information that he has is information that the narcotics squad had well in advance of the particular events on April 22."

The ruling of the court was a discretionary one and "[t]he court has a wide discretion in its rulings on the relevancy of evidence." *State* v. *Carr*, 172 Conn. 458, 464, 374 A.2d 1107; *State* v. *Saia*, 167

Conn. 286, 291, 355 A.2d 88; *State* v. *Blyden*, 165 Conn. 522, 531, 338 A.2d 484. No precise and universal test of relevancy is furnished by the law, and the question must be determined in each case according to the teachings of reason and judicial experience. *Eason* v. *Williams*, 169 Conn. 589, 591, 363 A.2d 1090; *State* v. *Towles*, 155 Conn. 516, 523, 235 A.2d 639. While the identity of an informer is information as to which the state has a qualified privilege "to further and protect the public interest in effective law enforcement"; *State* v. *Harris*, 159 Conn. 521, 528, 271 A.2d 74; *Roviaro* v. *United States*, 353 U.S. 53, 59, 77 S. Ct. 623, 1 L. Ed. 2d 639; the question to which objection was sustained did not require disclosure of the identity of the informer and we are inclined to believe that the court's ruling was an erroneous one. Nevertheless, any error committed was clearly harmless. In order to constitute reversible error, the ruling must have been both erroneous and harmful. *Milton* v. *Wainwright*, 407 U.S. 371, 92 S. Ct. 2174, 33 L. Ed. 2d 1; *State* v. *Tropiano*, 158 Conn. 412, 427, 262 A.2d 147, cert. denied, 398 U.S. 949, 90 S. Ct. 1866, 26 L. Ed. 2d 288; *State* v. *Fredericks*, 154 Conn. 68, 72, 221 A.2d 585. The question asked of the witness had nothing to do with the actual guilt or innocence of the defendant but concerned the reliability of the information supplied to the police by the informant. The reliability and accuracy of the information supplied were fully confirmed by the subsequent events and the evidence of the defendant's guilt was so overwhelming that the error, if any, was harmless. We cannot find any possibility of prejudice. *State* v. *Carr*, supra, 471; see also *State* v. *Rado*, 172 Conn. 74, 86, 372 A.2d 159; and *Milton* v. *Wainwright*, supra, 372, 377.

There is no error.

In this opinion the other judges concurred.

APPENDIX B

8418

STATE OF CONNECTICUT

vs.

JAMES E. RUNKLES, JR.

SUPREME COURT OF THE STATE OF CONNECTICUT

You are hereby notified that your Motion for Rehearing, dated April 7, 1978, was denied by the Connecticut Supreme Court on April 18, 1978.

/s/ Thomas H. Abraham
Clerk